5-15-06
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----Original Message-----
From: Sandra Parker [mailto:sandramparker@charter.net]
Sent: Thursday, May 04, 2006 3:30 PM
To: Dwyer, James
Subject: Fw: Pat. appl. 09/628,599 (our docket CA990018US1)

Dear Mr. Dwyer,

I hope that you can help me. Supervisory Examiner Breene may get back to me tomorrow but he did not look at the new MPEP sections form my attached e-mail.
Even if I get his response it may be late for my Response by the due date 5/7/06.

As you can see from the attached Office Action, old law 1.193 was cited, there is no 1207.4 (p.1200-39) form paragraph with the new CFR 41.31, there is no statement that the SPE "has approved of reopening by signing below [4]" and there are other numerous improprieties. Moreover, a completely
new search was done and new prior art was cited, instead of the prior art on the record.
Furthermore, as can be seen in the OA regarding claim 1, on pp. 4-5, it was rejected
under Sec. 102, however there is no mentioning of the "direct call mechanism replacing a lookup function",
which is the jist of the present invention, as seen in the Title, claims and elsewhere,
so this new rejection is frivolous, as were the two previous rejections.

Even if we file a new Reply Brief, it would be the first time to argue the new prior art and the Examiner may again reopen the prosecution with a new search.
What is to stop the examiner from doing new searches forever?
This cannot possibly be the policy, now that the patent term is calculated from the date of filing.

This kind of "prosecution" has been going on for 6 years now in this case.
It is clear that the examiner would have written the Examiner's Answer if he thought that he would win on Appeal so the application should be allowed now.
Doing a new search after 6 years is very unfair and there is no authority for it in any 37 CFR appeal rules.

Furthermore, it is unfair that a patent attorney cannot get to talk to the Supervisory Examiner, Director or SPRE. When calling the 2162 art unit number,
found in the PTO directory (571/272-2100), the voice mail loops and you cannot get
anyone.

Please help me. In my legal opinion the improper Office Action should be revoked
and the Appeal should be reinstated. The PTO Directory states, under Petitions,
that it is the role of the Director of the appropriate Tech. Center.

Because that is your function, please review and advise asap.

Best Regards,
Sandra Parker
562/597-7504

----- Original Message -----
From: "Sandra Parker" <sandramparker@charter.net>
To: "Breene, John" <John.Breene@USPTO.GOV>; "Ly, Anh" <Anh.Ly@USPTO.GOV>
Cc: "Corrielus, Jean M." <Jean.Corrielus@USPTO.GOV>
Sent: Tuesday, May 02, 2006 1:05 PM
Subject: Pat. appl. 09/628,599 (our docket CA990018US1)

> Dear Examiners,
>
> I received an improper Office Action. I need your review and instructions
> asap,
> in order to file either a Response or a new Notice of Appeal, by 5/7/06.
>
> This patent application was filed almost 6 years ago and has been under
> Appeal since 2004. We already filed an RCE previously, in 2003, after a
> false Examiner's promise, but to no avail. Almost two years after the
> Appeal
> Brief was filed,
> the Examiner issued an improper Office Action and used a law which was
> repealed almost 2 years ago (37 CFR 1.193). Moreover, he improperly
> performed a
> new search and this time he cited 2 IBM patents, but did not state that

> there are new ground for rejection. Even the mailing address is very old,
> at
> Washington DC. Moreover, he did not state that he obtained Supervisor's
> approval for the reopening.
>
> I left phone messages for the Supervisory Examiner and Primary Examiner.
>
> Please note that the new law is 37 CFR 41.39 and in MPEP it is Sec. 1207
> (p.
> 1200-26), 1207.03 (p. 1200-35) and 1207.04 (p. 1200-39). Actually, the new
> CFR 41.39 does not allow the examiner to reopen prosecution so it is
> unclear
> which law was followed in MPEP 1207 and 1207.04. Further, p. 1200-35
> states
> that a new ground of rejection is rare and may add a secondary reference
> from the prior art on the record. This was not followed here and two new
> references were picked in a new search.
>
> I propose to write a Response stating all the errors and request a
> substitute Office Action or Examiner's Brief and that a new law and ground
> of rejection is indicated as such and only using previously found prior
> art.
>
> Entering of the new prior art should not be allowed. Moreover, the
> Appellant
> should not have to pay additional appeal fees ($400 difference) and for a
> new Reply Brief.
>
> Please respond asap and propose an adequate solution.
>
> Please advise,
> Sandra Parker
>